IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

SPL. APPL. WRIT No. 445 of 1998

B.D. JOSHI
V/S
STATE OF RAJ.

Mr. SANJEEV PUROHIT, for the appellant / petitioner

Date of Order : 4.12.2007

HON'BLE SHRI N P GUPTA,J.
HON'BLE SHRI MUNISHWAR NATH BHANDARI,J.

ORDER

Heard the learned counsel for the parties.

By this appeal, the appellant seeks to challenge the judgment of the learned Single Judge dated 2.3.1998 dismissing the petitioner's writ petition.

By the writ petition, the petitioner sought to challenge the punishment order passed against him dated 30.9.1996. This order dated 30.9.96 has been produced with the writ petition as Annexure-11 whereby the Disciplinary Authority agreed with the enquiry officer report on charge No.1 and did not agree with the finding on charge No.2 and found both the charges to be proved and considering the material on record, the punishment was imposed upon the petitioner to pay Rs. 1,25,000/- to the Municipality and directed to be recovered from the gratuity and pension.

The two charges framed against the petitioner were that while working as Executive Officer in Municipal Board, Mount Abu from August to September, 1988, he without permission of the Administrator, received Rs. 6095/- by way of compounding fees for the construction raised by the Hotel Hillock and on 18.11.1987 passed the orders of regularistion and the order of the Administrator dated 16.11.1987 was not complied with. This was alleged to be a misconduct. While charge No.2 was that in the garb of beautification, the petitioner allotted uncovered portion of the land to Hotel Hillock while there is no record available in this regard with the Municipality though the allottees has copy of the permission. Thus, the petitioner in collusion with the hotel owner gave away valuable land to the hotel owner. After holding a complete enquiry, the Enquiry Officer found charge No.1 proved by concluding that from the note sheet of the file Ex. P.7 and from other documents including Ex. P/6 it is clear that construction of underground was made without permission and on two sides there were encroachments upto 3 feet and when the petitioner was asked by the Collector, he did not submit his report rather put a note that the matter may be inquired and have submitted that thereafter no enquiry was conducted. It was found that the Delinquent Officer (petitioner) has admitted that compounding fee of Rs. 6,095/- was deposited however, there is no sanction of the administrator. Thus, the petitioner was found guilty. In

regard to charge No.2, it was found by the enquiry officer that permission was given for beautification of the hotel by executing an undertaking on non-judicial stamp of Rs. 5/-. However, vide Ex. P/13, it appears that it was clarified that title of the land shall remain with the Municipality and therefore, it was found to be not a case of wrongful allotment. The Disciplinary Authority as regard Charge No.2 has only held that he is not able to agree with the finding of the enquiry officer because the Development Officer has acted beyond his powers especially when there was no permission of the Administrator, and plan was approved contrary to the orders of the administrator.

The learned Single Judge has agreed with the finding of the Disciplinary Authority on Charge No.1. However, regarding Charge No.2, it was held that the disagreement of the disciplinary authority regarding Charge No.2 has no bearing on the merits of the case; as noticed above, that the punishment imposed is only for recovery of Rs.1,25,000/-.

It is contended by the learned counsel for the appellant that the principles of natural justice have not been complied with in the enquiry,inasmuch as the appellant-petitioner was not made available the documents for which he applied, that there is tampering in the record of the Municipality,and various documents have been made to

disappear, which has occasioned substantial failure of justice. The other submission made is that the quantum of money which has been petitioner directed to pay is not in accordance with law. The other submission made is that the Disciplinary Authority has not given any opportunity to the petitioner as to why should disciplinary authority disagree with the findings of the enquiry officer, and as such the disagreement is without giving opportunity of hearing, and he should not be held guilty for Charge No.2.

We have considered the submissions and find that in the present case, the punishment order was passed on 30.9.1996, while the writ petition was filed on 21.2.1998, and in para 6, the learned Single Judge has found, that the petitioner is guilty of latches in filing the present writ petition with inordinate delay and therefore, the petition is liable to be dismissed on the ground of latches. It is thereafter that in abandon caution, the learned Single Judge has also gone into merits of the case, and has found that full fledged enquiry was held after affording reasonable opportunity of hearing to the petitioner, and findings of the delinquency is based on definite material available on record, and thus agreed with the findings recorded by the authority below.

In our view this finding so far Charge No.1 is concerned, does not require any interference in our

appellate jurisdiction, so far Charge No.2 is concerned, true it is that the appellant was not given any notice, but then, as found by the learned Single Judge, that the disagreement of the disciplinary authority about Charge No.2 has no bearing on the merits of the case, this coupled with the fact, that as found in para 6 of the impugned judgment, that petitioner is guilty of latches, and writ petition was liable to be dismissed on the ground of latches itself, we do not find any sufficient ground to interfere with the impugned order.

The appeal is dismissed.

(MUNISHWAR NATH BHANDARI),J. (N P GUPTA),J.

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